IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

MEDIOSTREAM, INC., a California corporation, Plaintiff, vs. ACER AMERICA CORPORATION, APPLE COMPUTER, INC., ASUS COMPUTER INTERNATIONAL INC., DELL, INC., and GATEWAY, INC. Defendants.	§ § § § § § § § § § § § § §	Civil Action No. 2-07CV-376 TJW **JURY TRIAL DEMANDED**

FIRST AMENDED COMPLAINT

Plaintiff MEDIOSTREAM, INC. for its Complaint against Defendants ACER AMERICA CORPORATION, APPLE COMPUTER, INC., ASUS COMPUTER INTERNATIONAL, INC., DELL, INC., and GATEWAY, INC., (collectively "Defendants"), alleges:

THE PARTIES

1. Plaintiff MedioStream, Inc. ("MedioStream") is a California corporation that maintains its principal place of business at 4962 El Camino Real, Suite 201, Los Altos, CA 94022.

2. Upon information and belief, defendant Acer America Corporation ("Acer") is a California corporation with its principal place of business at 333 West San Carlos Street, Suite 1500, San Jose, CA 95110.

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3. Upon information and belief, defendant Apple Computer, Inc. ("Apple") is a Delaware corporation with its principle place of business at 1 Infinite Loop, Cupertino, CA 95014.

4. Upon information and belief, defendant Asus Computer International Inc. ("Asus") is a California corporation with its principal place of business at 44370 Nobel Drive, Fremont, CA 94538.

5. Upon information and belief, defendant Dell, Inc. ("Dell") is a Delaware corporation with its principal place of business at One Dell Way, Round Rock, Texas 78682.

6. Upon information and belief, defendant Gateway, Inc. ("Gateway") is a Delaware corporation with its principal place of business at 7565 Irvine Center Drive, Irvine, CA 92618.

JURISDICTION AND VENUE

7. This action arises under the patent laws of the United States, Title 35, United States Code §§1 *et seq*. The jurisdiction of this Court over the subject matter of this action is proper under 28 U.S.C. §§1331 and 1338(a).

8. The personal jurisdiction of this Court over defendant Acer in this case is proper because, on information and belief, Acer, through various commercial arrangements has engaged in continuous and systematic activities within the State of Texas by *inter alia*, placing computer products which infringe MedioStream's patents into the stream of commerce, which stream is directed at the State of Texas, including this district, with the knowledge and/or understanding that such products would be sold in the State of Texas, including this district.

9. The personal jurisdiction of this Court over defendant Apple in this case is proper because, on information and belief, Apple, through various commercial arrangements has engaged in continuous and systematic activities within the State of Texas by *inter alia*, placing

computer products which infringe MedioStream's patents into the stream of commerce, which stream is directed at the State of Texas, including this district, with the knowledge and/or understanding that such products would be sold in the State of Texas, including this district.

10. The personal jurisdiction of this Court over defendant Asus in this case is proper because, on information and belief, Asus, through various commercial arrangements has engaged in continuous and systematic activities within the State of Texas by *inter alia*, placing computer products which infringe MedioStream's patents into the stream of commerce, which stream is directed at the State of Texas, including this district, with the knowledge and/or understanding that such products would be sold in the State of Texas, including this district.

11. The personal jurisdiction of this Court over defendant Dell in this case is proper because, on information and belief, Dell, through various commercial arrangements has engaged in continuous and systematic activities within the State of Texas by *inter alia*, placing computer products which infringe MedioStream's patents into the stream of commerce, which stream is directed at the State of Texas, including this district, with the knowledge and/or understanding that such products would be sold in the State of Texas, including this district.

12. The personal jurisdiction of this Court over defendant Gateway in this case is proper because, on information and belief, Gateway, through various commercial arrangements has engaged in continuous and systematic activities within the State of Texas by *inter alia*, placing computer products which infringe MedioStream's patents into the stream of commerce, which stream is directed at the State of Texas, including this district, with the knowledge and/or understanding that such products would be sold in the State of Texas, including this district.

13. Venue is proper in this Court under 28 U.S.C. §§ 1391(b) and (c) and 1400(b).

ACER'S INFRINGEMENT OF U.S. PATENT NO. 7,009,655 B2

14. On March 7, 2006, United States Patent No. 7,009,655 B2 (the "'655 patent") was duly and legally issued to MedioStream, Inc. with Qiang Huang named as inventor for an invention entitled "Method and System For Direct Recording of Video Information Onto A Disk Medium." By assignment, MedioStream is the owner of all rights, title and interests in the '655 patent. A copy of the '655 patent is attached to this complaint as Exhibit A.

15. Upon information and belief, defendant Acer has infringed and continues to infringe the '655 patent by engaging in commercial activities related to the manufacture, development, sale, offers to sell and importation into the United States, including this district, a variety of electronic products including, but not limited to, Acer's PC notebook computers, PC desktop computers, PC tablets and other products covered by the '655 patent, and is contributing to and inducing others to manufacture, use, sell, import, and/or offer for sale products covered by the '655 patent. Acer is liable for its infringement of the '655 patent pursuant to 35 U.S.C. § 271.

16. MedioStream has been damaged by the infringement or inducement of and/or contributory infringement of its patents by Acer and will continue to be damaged by such infringement or inducement of and/or contributory infringement unless enjoined by this Court.

APPLE'S INFRINGEMENT OF U.S. PATENT NO. 7,009,655 B2

17. On March 7, 2006, United States Patent No. 7,009,655 B2 (the "'655 patent") was duly and legally issued to MedioStream, Inc. with Qiang Huang named as inventor for an invention entitled "Method and System For Direct Recording of Video Information Onto A Disk Medium." By assignment, MedioStream is the owner of all rights, title and interests in the '655 patent. A copy of the '655 patent is attached to this complaint as Exhibit A.

18. Upon information and belief, defendant Apple has infringed and continues to infringe the ’655 patent by engaging in commercial activities related to the manufacture, development, sale, offers to sell and importation into the United States, including this district, a variety of electronic products including, but not limited to, Apple’s MacPro, Mini Macs, MacBook, MacBook Pro, iMac computers and other products covered by the ’655 patent, and is contributing to and inducing others to manufacture, use, sell, import, and/or offer for sale products covered by the ’655 patent. Apple is liable for its infringement of the ’655 patent pursuant to 35 U.S.C. § 271.

19. MedioStream has been damaged by the infringement or inducement of and/or contributory infringement of its patents by Apple and will continue to be damaged by such infringement or inducement of and/or contributory infringement unless enjoined by this Court.

ASUS’ INFRINGEMENT OF U.S. PATENT NO. 7,009,655 B2

20. On March 7, 2006, United States Patent No. 7,009,655 B2 (the “’655 patent”) was duly and legally issued to MedioStream, Inc. with Qiang Huang named as inventor for an invention entitled “Method and System For Direct Recording of Video Information Onto A Disk Medium.” By assignment, MedioStream is the owner of all rights, title and interests in the ’655 patent. A copy of the ’655 patent is attached to this complaint as Exhibit A.

21. Upon information and belief, defendant Asus has infringed and continues to infringe the ’655 patent by engaging in commercial activities related to the manufacture, development, sale, offers to sell and importation into the United States, including this district, a variety of electronic products including, but not limited to, Asus’ notebooks, optical storage devices and other products covered by the ’655 patent, and its contributing to and inducement of

others to manufacture, use, sell, import, and/or offer for sale of products covered by the ’655 patent. Asus is liable for its infringement of the ’655 patent pursuant to 35 U.S.C. § 271.

22. MedioStream has been damaged by the infringement or inducement of and/or contributory infringement of its patents by Asus and will continue to be damaged by such infringement or inducement of and/or contributory infringement unless enjoined by this Court.

DELL’S INFRINGEMENT OF U.S. PATENT NO. 7,009,655 B2

23. On March 7, 2006, United States Patent No. 7,009,655 B2 (the “’655 patent”) was duly and legally issued to MedioStream, Inc. with Qiang Huang named as inventor for an invention entitled “Method and System For Direct Recording of Video Information Onto A Disk Medium.” By assignment, MedioStream is the owner of all rights, title and interests in the ’655 patent. A copy of the ’655 patent is attached to this complaint as Exhibit A.

24. Upon information and belief, defendant Dell has infringed and continues to infringe the ’655 patent by engaging in commercial activities related to the manufacture, development, sale, offers to sell and importation into the United States, including this district, a variety of electronic products including, but not limited to, Dell’s notebook PCs, desktop PCs, Precision Workstations, consumer desktop systems, and other products covered by the ’655 patent, and is contributing to and inducing others to manufacture, use, sell, import, and/or offer for sale products covered by the ’655 patent. Dell is liable for its infringement of the ’655 patent pursuant to 35 U.S.C. § 271.

25. MedioStream has been damaged by the infringement or inducement of and/or contributory infringement of its patents by Dell and will continue to be damaged by such infringement or inducement of and/or contributory infringement unless enjoined by this Court.

GATEWAY'S INFRINGEMENT OF U.S. PATENT NO. 7,009,655 B2

26. On March 7, 2006, United States Patent No. 7,009,655 B2 (the "'655 patent") was duly and legally issued to MedioStream, Inc. with Qiang Huang named as inventor for an invention entitled "Method and System For Direct Recording of Video Information Onto A Disk Medium." By assignment, MedioStream is the owner of all rights, title and interests in the '655 patent. A copy of the '655 patent is attached to this complaint as Exhibit A.

27. Upon information and belief, defendant Gateway has infringed and continues to infringe the '655 patent by engaging in commercial activities related to the manufacture, development, sale, offers to sell and importation into the United States, including this district, a variety of electronic products including, but not limited to, Gateway's PC desktops, PC notebooks and other products covered by the '655 patent, and is contributing to and inducing others to manufacture, use, sell, import, and/or offer for sale products covered by the '655 patent. Gateway is liable for its infringement of the '655 patent pursuant to 35 U.S.C. § 271.

28. MedioStream has been damaged by the infringement or inducement of and/or contributory infringement of its patents by Gateway and will continue to be damaged by such infringement or inducement of and/or contributory infringement unless enjoined by this Court.

JURY DEMAND

29. Pursuant to Fed. R. Civ. P. 38(b), Plaintiff MedioStream hereby demands a trial by jury on all issues triable of right by a jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff MedioStream, Inc. requests entry of judgment in its favor and against Defendants as follows:

a) Declaration that U.S. Patent No. 7,009,655 B2, during the relevant period is enforceable and not invalid;

b) Declaration that Defendants have infringed, directly or indirectly, U.S. Patent No. 7,009,655 B2;

c) Permanently enjoining Defendants and, the respective officers, agents, employees, and those acting in privity with them, from further infringement, contributory infringement and/or inducing infringement of U.S. Patent No. 7,009,655 B2;

d) Awarding the damages arising out of Defendants' infringement or inducement of and/or contributory infringement of U.S. Patent No. 7,009,655 B2 to MedioStream, Inc., together with prejudgment and post-judgment interest, in an amount according to proof;

e) Declaration that this is an exceptional case and MedioStream be awarded its costs and reasonable attorneys' fees incurred in this action as provided by 35 U.S.C. § 285 or as otherwise permitted by law; and

f) For such other costs and further relief as the Court may deem just and proper.

DATED: September 5, 2007

Respectfully submitted,

By: /s/ S. Calvin Capshaw

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